

STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-1713



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Rick Rossow,

Respondent,

vs.

Tim Kremer,

Appellant.

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**ORDER OPINION**

Kandiyohi County District Court  
File No. 34-CV-21-56

Considered and decided by Larkin, Presiding Judge; Bryan, Judge; and Klaphake, Judge.\*

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:**

1. This appeal arises out of a conciliation court replevin action in which respondent Rick Rossow sought the return of equipment from appellant Tim Kremer related to the placement of a shed on Kremer's property. The conciliation court granted judgment in favor of Rossow. Kremer demanded removal to the district court for a trial de novo. *See* Minn. R. Gen. Prac. 521(a) (noting that a person aggrieved by the decision in conciliation court "may remove the cause to district court for trial de novo"). Rossow filed an amended complaint seeking the return of his equipment and the reasonable rental value of that equipment. Following a bench trial, the district court found in favor of Rossow on

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

both claims. Kremer now appeals. However, because Kremer did not file a motion for a new trial in district court, our review is limited to “whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and judgment.” *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976).

2. A district court may render judgment for the return of property under the doctrine of replevin and for damages caused by the wrongful detention of property. *See* Minn. Stat. § 548.04 (2022). In an action for replevin, damages “may be for the possession or the value thereof in case possession cannot be obtained, and damages for the detention, or the taking and withholding.” *Id.* Thus, a district court may award monetary damages in addition to ordering recovery of wrongfully detained property. *Id.* The fact-finder assesses the value of the property and the damages that the prevailing party sustained “by reason of the detention, or taking and withholding, of such property.” Minn. Stat. § 546.23 (2022).

3. The record evidence supports the district court’s determination that Rossow was entitled to the return of his equipment and to the reasonable rental value of this equipment. Rossow moved a shed to Kremer’s property. Because Kremer had not yet prepared a permanent site for the shed, Rossow temporarily stabilized it with steel beams and wooden cribbing. Kremer used this equipment for several years without compensating Rossow. Rossow’s witness testified that a property owner is responsible for preparing a foundation for a building. If a property owner fails to do so, a contractor charges rental fees for the use of the contractor’s equipment. The district court found this testimony credible, and we defer to these credibility determinations. *See City of Minnetonka v. Carlson*, 298 N.W.2d 763, 767 (Minn. 1980) (noting that a district court sitting without a

jury “is the sole judge of the credibility of witnesses and may accept all or only part of any witness’s testimony”). We conclude that the evidence in the record sustains the findings of fact, and the findings sustain the conclusions of law and judgment.

4. Additionally, Kremer asserts that Rossow’s action was barred by the statute of limitations and that Rossow failed to mitigate his damages. Kremer failed to raise these issues before the district court, and we therefore deem these arguments to have been forfeited. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (explaining that an appellate court generally will not consider matters not argued to and considered by the district court).

**IT IS HEREBY ORDERED:**

1. The district court’s judgment is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: July 28, 2023

**BY THE COURT**

/s/

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Judge Roger Klaphake